

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



December 23, 2010

Milton Shinberg
4733 Bethesda Ave, Suite 550
Bethesda, MD 20814

RE 2949 Upton St NW – Regulation of Accessory Apartments in the R-2 District

Dear Mr. Shinberg:

You asked me to address how Accessory Apartments are regulated under the DC Zoning Regulations for the R-2 district, which therefore impacts your pending BZA application #18155, which is scheduled for hearing January 4, 2011. You have presented an analysis of the Zoning Regulations regarding the proposed creation of an Accessory Apartment at 2949 Upton Street NW, which is located in the R-2 zone, asserting that the special exception requirement does not apply to establishing an Accessory Apartment, except in cases of properties in the R-1 District.

The key question is whether the zoning requirements for a BZA Special Exception in the R-1 district, under 11 DCMR 202.10 for establishing an Accessory Apartment, also applies to Accessory Apartments in the R-2 district. My conclusion is that approval of an Accessory Apartment in the R-2 zone does not require a special exception.

In the zoning regulations 11 DCMR 202.10 provides that

An accessory apartment may be added within an existing one-family detached dwelling if approved by the Board of Zoning Adjustment as a special exception under § 3104,

In your case, which involves a semi-detached dwelling, the question is if this special exception requirement applies to a dwelling in the R-2 district. Sections 301 and 302, address Accessory uses in the R-2 zone:

301 ACCESSORY USES AND BUILDINGS (R-2)

301.1 The following accessory uses or accessory buildings incidental to the uses permitted for R-2 Districts in §§ 300 through 319 shall be permitted in R-2 Districts:

- (a) Any accessory use permitted in R-1 Districts under § 202 not regulated in this subsection;

302 SPECIAL EXCEPTIONS: GENERAL (R-2)

302.1 Any use or structure permitted in R-1 Districts under §§ 205 through 209, 211 through 221, and 223 shall be permitted as a special exception in an R-2 District if approved by the Board of Zoning Adjustment under § 3104.

Because Section 202.10 is listed under the list of accessory uses for R-1 under Section 202 in general, and Section 301.1(a) allows such accessory uses as a matter of right in the R-2 zone, the permitting of an accessory apartment in R-2 without relief from BZA is allowed.

This analysis is consistent for R-2 and R-3, the logical bridge between R-1 and R-4 permitted uses. The pairing of these two sections makes the path clear:

Under 302.1, specific uses are listed as Special Exceptions, and thus require BZA review. The balance of the uses under 202, then are therefore permitted as an Accessory Use. Under 202.10, an Accessory Apartment is the subject use. In 302.1, there is no conditional language forcing BZA review for approval of the Accessory Apartment as there is for such in the R-1 zones.

Essentially, the contrast between 302.1 and 302.2 is dispositive. Reinforcing this conclusion is that Section 3104.1, listing *all* Special Exceptions. The first item is "Accessory apartments to one-family detached dwelling, and is limited to the R-1 district only. I conclude that if a special exception was required for accessory apartments in R-2 (or R-3) zones the regulations would have specified this.

On the basis of this analysis, I will grant permission for the Accessory Apartment at 2949 Upton Street, NW, in the R-2 zone without referral to BZA for review and will approve the applicant's permit to add a kitchen to the unit and related modifications as may be necessary to achieve that use.

I advise you to withdraw the application accordingly without negative consequence in creating an Accessory Apartment at 2949 Upton Street NW. I had previously reviewed the design and judge it appropriate to the requirements for an Accessory Apartment provided all other District regulations are met.

Sincerely,



Mathew Le Grant
Zoning Administrator